

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1018

In the
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-1018

B

THE UNITED STATES OF AMERICA,
Appellee,

vs.

MICHAEL PATRICK BARRETT,
FERDINAND SANTANA,

Defendants-Appellants.

APPENDIX FOR DEFENDANT-APPELLANT SANTANA



SALVEX RODENBERG
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PAGINATION AS IN ORIGINAL COPY

6/23/76

a week for voluntary discovery. Motions under Rules 6 and 7 and requests under Rule 13 are to be filed by 7/7/1976. The Government is to respond by 7/12/76 and argument is scheduled for 7/13/76. Motion for reduction of bail for deft. Santana denied. Bail continued as previously set. Proceedings before the Magistrate - Deft. Santana advised the Court that Mr. Brownstein will be representing him instead of Atty. Samuel Porla. Court set the following schedule for discovery and adj. the schedule previously set for deft. Santana. Motions are to be filed by 7-12-76; Govt to respond by 7-16-76; argument scheduled 7-26-76.

6/29/76

7/7/76

Filed deft's notice of motion for discovery and inspection, rec. 7-13-76.

7/14/76

Filed Govt's response to certain pre-trial motions made by the deft. Joseph Charles Ferraro.

7/13/76

Proceedings before the Magistrate - No appearance for defts. No motions have been filed. Court will contact Mr. Brownstein re filing motions.

7/14/76

Proceedings before the Magistrate - Proceedings adj. to 7-15-76. Deft's are to appear with counsel for determination as to counsel and for completion of discovery.

7/15/76

Filed Govt's motion to move action ready for trial.

7/15/76

P.M. - Court directed that both Atty. Brownstein and Atty. Salton Rodenberg meet with the Govt. and both are to appear for argument of motions on 7/16/76 and for determination as to representation of the defendants.

7/16/76

P.M. - Both Attorneys have met with the Govt. and are satisfied with discovery. They do not anticipate filing any discovery motions. Discovery deemed complete and case will be returned to Clerk. Defts. are remanded to custody of the Marshal.

8/12/76

Pre-trial conference held. Trial Sept. 14, 1976

7/19/76

Filed Order to show cause, why an order

FILE AND RETURN FOR PAYMENT

(over)

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a) (b) (c) (d)
(Document No.)		
9/18/76	Filed subpoena - Linda L. Sheehy, served 9/18/76	
9/20/76	Filed six subpoenas - Sharon Canazaro, Maurice Caffer, Judy Guenot, Tom Couch; served 9/18/76; Mrs. John J. Gorman, Mrs. Ethel Fortman, served 9/18/76	
9/23/76	Filed three subpoenas - Angelo Canazaro, served 9/17/76; William Overfield, served 9/21/76 and Helen Chu; returned no-service	
9/28/76	Filed subpoena - William Staehle, served 9/27/76	
10/1/76	Filed two subpoenas - Gerald F. Kopacz, and Janet Schmidt, served 9/27/76	
9/30/76	Trial continues from 9/14/76 with the same appearances - jury. Motion by Co-Def. Ferraro for suppression. Motion denied. Def. Ferraro moves for a severance. Motion denied. Govt. opens - Witnesses are called. Trial is adj. until tomorrow.	
10/1/76	Trial continues from yesterday with the same appearances and jury. Trial is adj. until 10/5/76.	
10/5/76	Trial continues from 10/1/76 with the same appearances and jury. On motion of the deft. the court declares a mistrial and the jury is discharged.	
10/7/76	Filed subpoena Corrine Johnson, served 10/5/76	
10/7/76	Filed Decision and Order - Def. Ferraro's motion to suppress evidence seized at 836 Richmond is denied as far as those items in the "plain view" or "incident to arrest" are concerned. If the parties cannot agree upon what items fit into these categories, they shall report to the court before trial so that argument on particular items may be heard--Curtin, J.	
10/8/76	Filed subpoena Eugene M. Machow, served 9/28/76	
10/12/76	Government moves case ready for trial, before Judge Curtin, at Buffalo, whereupon the Jury is duly empanelled: Trial is Adj. until 10/15/76	
10/12/76	Filed subpoena - George Nowady, served 10/14/76	

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
10/27/76	Filed 20 subpoenas - Judy Guenot, Natalie Rossini, Alberta J. Love, Pierre J. Garneau, not served - witnesses appeared on 10/15/76; Carleton E. Gilmour, Mary Iacobelli, Joseph John Candee, not served. Witnesses appeared 10/18/76; Francis J. Mulvey, Mrs. John J. Gorman, Jack R. Stark, Jr., Paul R. Delano, Stephen J. Evans, Norbert Kupinski, Dominic R. Race, William Bowen, not served. Witnesses appeared on 10/20/76; Ruth Isaacs, Dennis Louchren, Angelo Canazaro, Thomas M. Dzilelski, not served. Witnesses appeared on 10/21/76; Gisele Buckman, served 10/22/76, and one subpoena (D.T.) - E.J. Meyer Memorial Hospital served 10/22/76				
10/29/76	Filed Transcript of the Direct examination of Witness Joseph Ferraro, taken on 10/27/76				
10/29/76	Filed Five subpoenas - Kathleen Baron, Jacqueline Kontac, Doris Ganger, Linda Sheehy, Doris Ganger, served 10/21/76				
10/29/76	Trial continues from 10/27/76 with same jury and appearances. Allydefast move for a mistrial because of article in Courier. Motions denied. Trial adj. 11/1/76.				
11/1/76	Filed subpoena Joseph Mose, served 10/23/76.				
11/1/76	Trial continues from 10/29/76 with same jury and appearances. Attys. sum up. Court adjs. trial until tomorrow.				
11/2/76	Trial resumes from yesterday with same appearances & jury. The jury retires to deliberate upon their verdict. After listening to instructions, jury is sent home for the night to return tomorrow morning to continue their deliberation.				
11/3/76	Jury continues deliberation from yesterday. Jury returns with the following verdict: Deft. Santana - Count One - Guilty; Count Two - Guilty; Count Three - Guilty. Deft. remanded to the custody of the Marshal. Court does not set a sentence date.				
11/3/76	Filed Jury Verdict				
11/17/76	Filed transcript of cross examination of Witness Joseph Ferraro taken on 10/19/76				
11/10/76	Motion by deff. to set aside the jury verdict and for judgment of acquittal. Court grants the deffs. 11/15/76 to file written motions.				

CRIMINAL DOCKET

Cr-76-55

COURT FILE

FILED

FMS
1976

PROCEEDINGS

- Nov. 18 Filed deft's notice of motion pur. to Rule 29c of the Fed.R.Crim.P. for an order setting aside a jury verdict ret.11/3/76, etc.,
ret. 12/2/76
- Nov. 23 Filed Government's memorandum in opposition to certain motions made by the defendant
- Dec. 2 Oral argument on motions. Adj. 12/8/76
- Dec. 6 Motions scheduled but not heard. 12/6/76
- Dec. 8 Return of motions. Adj. to 12/8/76
- Dec. 9 Court rules that motions by deft. Barrett And Santana to dismiss the indictment were timely made. Motions to dismiss are denied. All defes. motions to set aside verdict are denied.
- Dec. 10 Deft. is sentenced as follows: On Count Two of the Indictment, deft. is remanded to the custody of the Attorney General for a period of Ten (10) Years. It is the intent of the Court that a single general sentence be imposed on all counts. See Prince against the U.S. 352 U.S. 322, and Gorman against U.S. 458 F.2d (2nd Cir. 1972). This sentence is run concurrently with the sentences imposed in Cr-76-102, Cr-76-104 and Cr-76-106-- CURTIN, v.
- Dec. 16 Filed Judgment and Commitment. Commitment issued.
- Dec. 23 Filed copy 5 CJA-21 authorization for ct. S. exp. copy 4 to Adm. Office. CURTIN, v.
- Dec. 22 Filed deft's. notice of appeal.
1977
- Jan. 6 Copy of notice of appeal, financial affidavit form A and a copy of docket entries mailed to CCA
- Jan. 12 Filed Certified cv. of U.S.C with Marshall's ret. of service - to the U.S. Penitentiary at Atlanta on 1/5/77
Change of the Court,
- Jan. 16 Filed Cr. Santana's transcript of 1/15/76 held before Hon. John T. Curtin, 11/2/76 (Added by J. T. Curtin, 1/16/77)
- Feb. 11 Filed Transcript of proceedings of trial on 10/12/76, 10/15/76, 10/16/76, 10/20/76, 10/21/76, 10/22/76, 10/23/76, 10/24/76, 10/25/76, 11/1/76, 11/2/76, 11/3/76. Also transcript of sentence
- Feb. 11 Filed transcript of proceedings of In-Chambers conference during trial on 10/24/76 - Ordered sealed by the Court.
- Feb. 11 Filed Cv. 2 of CJA-21 - Voucher for transcript in the amt. of \$376.25; Orig. to the Adm. Office for payment.
- Feb. 11 Original pertinent papers, clerk's certificate, index to record on appeal, and index to exhibits, and copy of docket entries mailed to CCA.

1 A Just saw the back of the person's head. The person
2 had sandy blonde hair; that's all I could see from
3 that distance there, just the back.

4 Q I take it then there came a time that vehicle left
5 your sight?

6 A Yes.

7 Q What did you do then?

8 A Well, what I immediately did was run in the bank. I
9 wrote down on a piece of paper the license plate
10 number and a description of the car I had seen.

11 Q Do you remember the license plate number?

12 A I think it was EC-881. I am not sure.

13 Q I show you what is marked as Government Exhibit 47.

14 Do you recognize that, Mr. Stark?

15 A Yes, that is a piece of my desk note paper.

16 Q Do you recognize any of the writing on that?

17 A Yes. That is all my writing.

18 Q Okay. Do you see that license number that you just
19 mentioned on that piece of paper?

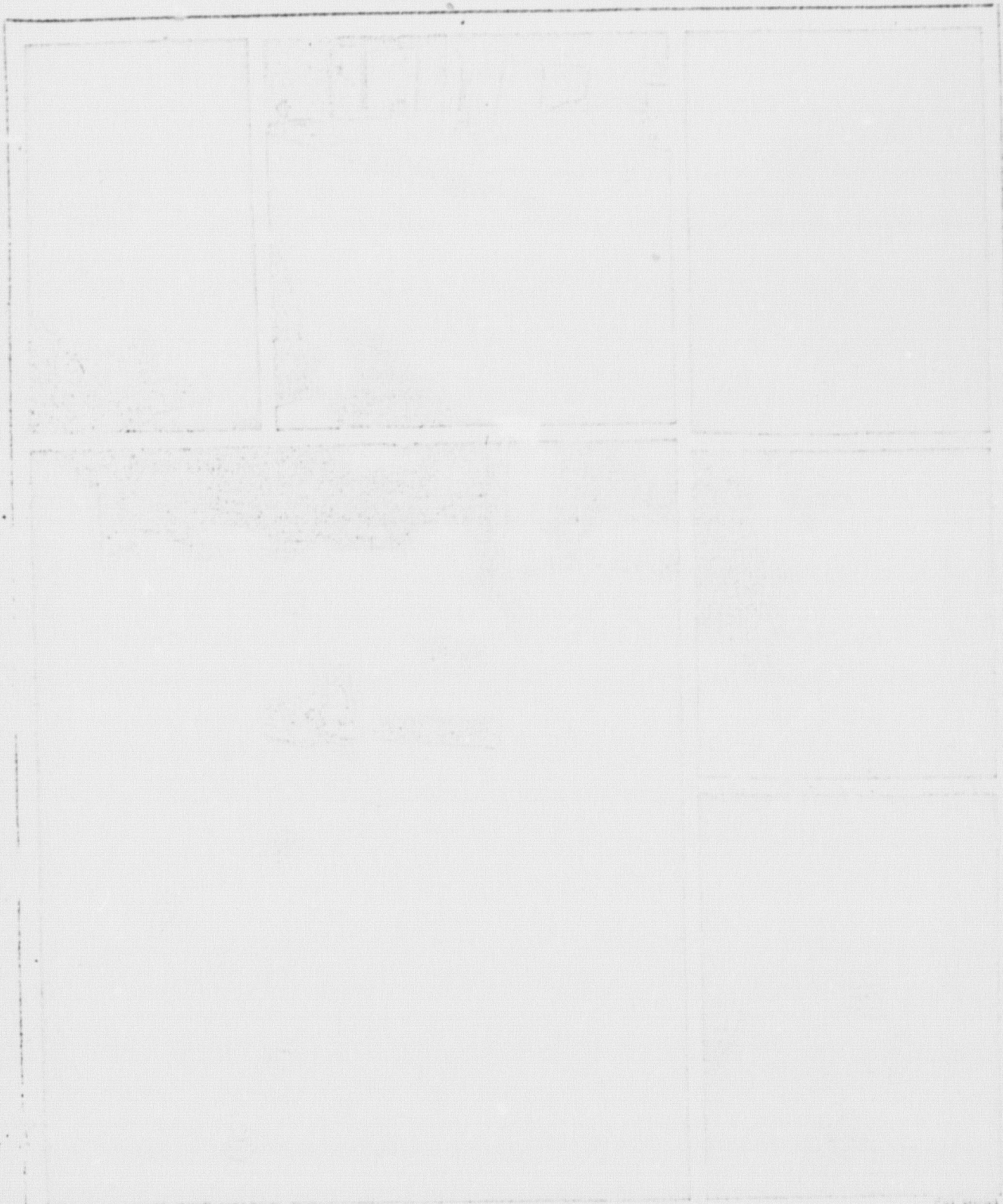
20 A Yes, I do.

21 Q And that is in the middle of the page, approximately
22 the middle of that notebook paper?

23 A Yes.

24 Q What do you have written below there?

25 A Blue Cadillac.



Surveillance camera photos of several suburban Buffalo bank holdups indicate similar methods
... authorities working on theory same gang is involved

FBI Links Rash of Bank Holdups To Pro Gang; Take Put at \$150,000

By JOHN PAULY

A loosely-knit gang of "pros" has been responsible for a rash of recent suburban bank robberies, the FBI disclosed Thursday.

Their total take is now about \$130,000, counting Tuesday's job in Amherst, Special Agent Dennis M. Gibbs said.

"They (the bandits) are armed and they mean business," Gibbs said. He noted that a trio of robbers shot up a West Seneca branch during a \$40,000 holdup and then fired two bullets at a pursuing civilian.

Gibbs, head of the local FBI's bank robbery squad, said there have been "similarities" in nine unsolved suburban holdups this year.

"They take over the banks. They vault the counter instead of asking the tellers for money," Gibbs said, starting to tick off the pattern.

"They pick banks near thruway or expressway entrances; they switch cars a short distance from the bank; they use plastic garbage bags; and there is always the long barreled hand gun," the special agent explained.

Another trademark is the wearing of ski masks.

Gibbs said the investigations by the FBI and local police indicate that the banks are "checked" or watched before they are struck.

"In Tuesday's robbery (at the Bank of New York Office at 1884 Kensington Ave.) they entered through a side door instead of the front which they wouldn't have done if they hadn't looked it over beforehand," he said.

Two bandits armed with a sawed-off shotgun and a long barreled handgun escaped with \$11,000 in Tuesday's holdup.

"There are about eight members of the loosely knit gang and they have worked with a maximum of four guys on some jobs," Gibbs explained.

The FBI bank robbery squad chief explained that three men shot out two glass doors leading to a vault in the West Seneca Branch of the Erie County Savings Bank holdup April 26, before escaping in an auto driven by a fourth man.

The quartet also fired two shots at a motorist who followed them before he broke

off the chase and they switched to a second getaway auto, authorities said.

The gang also worked in a quartet during the \$5,500 March 18 holdup at the Marine Midland Bank-Western office at 4237 Union Rd., Cheektowaga.

"They started working the suburban banks here in December of last year," Gibbs said.

"The shift in bank robberies is to the suburbs from the city," he explained.

"All you have to do is walk into some city banks and see the armed guards and high windows protecting the tellers to know the reason," Gibbs noted.

"The suburban banks were easier, but they are becoming tougher now with the installation of armed guards, better alarms, and better cameras," he said.

The special agent also noted that bandits are further deterred from city holdups because of the high number of arrests made there by his men and officers working under Lt. Raymond C. Pries of the police Robbery Squad.

FBI agents and police have made arrests in three of the

four bank robberies in the city so far this year.

Last year there was a record 43 bank holdups in Buffalo compared to 15 in 1974. Last year there was a total of 16 suburban holdups compared with nine so far in 1976.

"The courts also are cooperating," Gibbs said in noting that Federal Judge John T. Elvin recently imposed prison terms of 14 and 15 years on two men involved in a recent city bank holdup.

U.S. Atty. Richard J. Arcara explained that his office considers bank robbery cases "top priority prosecutions."

"We have nearly a 100 per cent conviction rate in bank holdups," Arcara said.

Are the authorities getting close to cracking the suburban gang, Gibbs was asked.

"We have some suspects, but frankly we could use a break," he said.

Gibbs said citizens can help the FBI and police by being alert and noting anything suspicious, but urged civilians to take no action themselves if they suspect a robbery.

"We don't want any innocent bystanders killed," he concluded.

1 PROCEEDINGS: October 29, 1976, 9:40 a.m.

2 APPEARANCES: As before noted.

3 (Defendant Ferraro present.

4 Defendants Barrett and Santana not
5 present.)

6 (Jury not present.)

7
8 THE COURT: We are assembled in United States
9 against Barrett, et al, and the defen-
10 dants are not here yet. I believe you
11 have a motion someone, - Mr. Rodenberg.

12 MR. BROWNSTEIN: We all do.

13 MR. RODENBERG: Yes, I do, your Honor. At this
14 point for the defendant, Santana, I
15 would move for a mistrial realizing full
16 well, your Honor, the time we have spent
17 and there has been a prior mistrial.
18 Your Honor, I predicate that on the
19 prosecutorial misconduct of the United
20 States Attorney's Office and the FBI,
21 specifically excluding Mr. Williams.
22 The article which appears on Page 15
23 of the Courier Express of this morning
24 which I know your Honor can read or has
25 read, includes this, which I wish to

-11-

1 point out at this time, "U.S. Attorney
2 Richard J. Arcara explained that his
3 office considers bank robbery cases top
4 priority prosecutions". The paragraph,
5 sir, immediately before that even drags
6 the courts in it. Now, the FBI agent,
7 Mr. Gibbs says, "The courts also are
8 cooperating" and goes on about fourteen
9 and fifteen year sentences imposed.
10 That doesn't concern me about the fourteen
11 and fifteen year sentences but this
12 business about "The courts also are
13 cooperating", in the very paragraph
14 preceding what Arcara said, which Arcara
15 had no right to say anything at this
16 point, sir. Arcara, - Mr. Arcara must
17 know that a bank robbery trial is in
18 progress here. I am sure the Federal
19 Bureau knows because of the problems
20 we had with one of its agents on Wednes-
21 day. Now, sir, the factual recitation
22 clothed in supposed "MO's" covers us
23 or covers the prosecutorial position
24 exactly, sir. They take, - first he
25 talks about nine unsolved suburban

-12-

1 holdups and this year and then he talks
2 about taking over the banks, vaulting
3 the counters instead of asking the
4 tellers for money. I find it hard to
5 believe. I am not going to read the
6 rest of it.

7 MR. BROWNSTEIN:

I will read it.

8 MR. RODENBERG:

9 I find it hard to believe, your
10 Honor, that that was not put in specifi-
11 cally for this case and in the hope that
12 the jurors would not only see it, it is
13 difficult to miss, even if they comply
14 with your admonition not to listen, not
15 to read, not to do anything. It is
16 deliberately put, sir, on this action
17 column page. It has got this right to
18 no business here. It is a page which
19 is probably - -

20 (Defendants Barrest and Santana
21 return to the courtroom.)

22 THE COURT:

So we have it - -

23 MR. RODENBERG:

Yes, sir.

24 THE COURT:

25 Let us tear that page out and make

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it . court exhibit and we will make it
part of the record.

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MR. RODENBERG:

I understand that, sir.

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THE COURT:

Let us do that. Just hand the page
up and we will have it here. I have
read the article and I have looked at
the picture so we do not have to have the
article read again. Mr. Brownstein,
what is your position?

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MR. RODENBERG:

Well, may I just finish with this,
your Honor. That it describes a
methodology used by bank robbers of
suburban banks which is identical with
what the Government claims here and, sir,
as I say, I think it is even not important
whether the jurors read it. The U.S.
Attorney knew this case was being tried.
He had himself interviewed. I am not
going to tell you - -

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THE COURT:

You have made that statement before,
Mr. Rodenberg.

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MR. RODENBERG:

Yes, I did, and the same for the FBI.

22

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THE COURT:

All right. Now, Mr. Brownstein.

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(Government Exhibit Number 65

marked for identification.)

-14-

H. T. Amel & E. F. Hinkley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 THE COURT:

Could you hand it up to me, Mr.
White. Go ahead, Mr. Brownstein.

3 MR. BROWNSTEIN:

4 The timing of this article and the
5 tone of this article and the pictures
6 in this article makes it as a rational
7 man, which we both are, absolutely, your
8 Honor, impossible for anyone, any logical
9 rational man to, in the event of the
10 polling of the jury or a harmless error
11 is discussed to believe that this kind
12 of a thing can not and will not prejudice
13 this case. It is, - I haven't been
14 around as long as Zel has in the trial
15 of these actions but I have never seen
16 anything like this. It almost reeks of
17 premeditation. I can't believe that
18 somebody would do such a thing as this.
19 It can't be innocent. To talk of
20 prejudice is just almost a joke. It
21 absolutely destroys our case and makes
22 the possibility of an acquittal a joke
23 and I am very upset over the thing.
24 Five weeks time, the case I felt going
25 in well on our part and now having this
happen at this juncture makes me too

angry almost to speak to this court
except to say that I obviously join in
strongly, the motion for a mistrial.

THE COURT:

Is Mr. Arcara downstairs?

MR. WILLIAMS:

Yes. Yes, he is.

THE COURT:

Mr. White, call downstairs and tell
Mr. Arcara that it is most urgent that
he come up to the court. Mr. Carlisi,
what do you want to say about it?

MR. CARLISI:

Well, I am not going to repeat what
has been said by fellow counsel, your
Honor. I just want to add a couple of
things that are pertinent. First of
all, as the court is aware, because it
has the paper before it, the photographs,
your Honor, take up almost a quarter of
a page. There are six photographs of
surveillance photos similar to the ones
we have in this case, a couple of which
show hoods on the individuals and one
shows a poncho. The evidence in this
case is identical to the newspaper
photographs and in addition to which - -

THE COURT:

It is similar.

MR. CARLISI:

Yes.

1 THE COURT:

In that they show a man vaulting
the counter in the photos.

3 MR. CARLISI:

Not only that, your Honor, the use
of plastic garbage bags is mentioned in
the article and the switching of cars
a short distance from the bank is
mentioned in the article; the use of
long barreled handguns is mentioned
in the article, all identical to the
proof in this case. The fact that the
banks that are picked for these robberies
are located near expressways, exactly
the proof in this case. The Chase
Manhattan Bank is located near an
expressway and we have testimony on that.
The similarities are rank. Another
problem, your Honor, which hasn't been
brought up, the mention of this article
came over television this morning in a
news broadcast at approximately 8:25.
I don't know which channel, but I was
told that a black female reporter on a
news, a local news program mentioned
this particular incident; that the FBI
has mentioned in this article that in a

statement that there are suspected, -
there is a suspected ring of approximately
eight people involved.

THE COURT:

Certainly we can tell the jury
that we know definitely that Mr. Barrett
and Mr. Santana, - we would hate to put
it that way - -

MR. CARLISI:

I would love to have you put it
that way, your Honor.

THE COURT:

All right. Mr. Williams.

MR. CARLISI:

Your Honor - -

THE COURT:

Mr. Carlisi.

MR. CARLISI:

Yes, your Honor, I am sorry. One
last point. I feel like I have spent
half the time in this trial moving for
mistrials and I am reluctant to do it
again but I have to do it obviously.
The jury has been admonished so many
times and asked about certain incidents
that occurred.

THE COURT:

Just one time I think with this
jury.

MR. ROSENBERG:

Yes, that's right.

MR. CARLISI:

Yes, that's right. There were
more motions but they were asked about

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1 the fight incident in the hall involving
2 Mr. Ferraro, but they have been admonished
3 so many times not to read and so forth.
4 Now, I feel it would be almost impossible
5 for at least one of these jurors not to
6 have seen this article or heard reports
7 on television and radio and in addition
8 to which after such a lengthy trial I
9 think the pressure upon a juror to admit
10 this would be tremendous.

11 THE COURT:

The trial, although it would seem
12 we have been here for a long time, as
13 far as days of testimony, it really has
14 not been too long.

15 MR. CARLISI:

I think the Court sees my point,
16 though, thank you.

17 THE COURT:

All right. Mr. Williams, is Mr.
18 Arcara on the way?

19 THE CLERK:

Judge, I talked to Betty and she
20 said he just stepped out of the office.

21 THE COURT:

Mr. Williams.

22 MR. WILLIAMS:

Judge, with respect to this article,
23 she only, - the first that I was aware
24 of it was this morning at about quarter
25 to 9:00 when Mr. Arcara asked me if I

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had seen the Courier Express and I told him, "No" and he showed me the article and he said he was interviewed yesterday by, - I don't know whether he said, Terry McElroy or John Pauly of the Courier about bank robbery cases generally over the last many years and he also told me that he learned from John Pauly that Dennis Gibbs was interviewed yesterday at the FBI and as I understand from Mr. Arcara, and perhaps we ought to get Mr. Gibbs over here too, was that Mr. McElroy told Mr. Gibbs there probably wouldn't be any article in the paper for a couple of weeks or so. In any event, Judge, that is what I have been told. I didn't give out any story. I didn't authorize it. This is the first I knew about it was this morning. In any event, we don't know whether or not any of the jurors have read it. We don't know if they are aware of it. We don't know if they ever heard the newscast or television broadcast this morning. I think over and above it the article really cuts both ways.

-20-

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I would submit that, if anything, it perhaps hurts me more than it helps me when you look at the - -

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THE COURT:

How do you say that?

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MR. WILLIAMS:

Well, if you look at the same "MO"

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there is a group of professionals performing these robberies, the "MO's"

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are the same, they use long barreled

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guns, they take down banks adjacent to

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expressways, they vault over the counter,

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they wear the same kind of garments.

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In other words, these defendants are

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here, they couldn't have committed the

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bank robbery, and they are the same as

14

these other ones that are unsolved.

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THE COURT:

What can we tell the jury in that

17

regard?

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MR. RODENBERG:

Well, your Honor, that is outside

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the - -

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THE COURT:

Let us start somewhere.

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MR. RODENBERG:

All right, sir.

22

THE COURT:

We know Mr. Barrett and Santana

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did not do it. Mr. Ferraro is in enough

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trouble now. It would certainly be a

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great surprise to me if he did it but - -

-21-

H. T. Abel & E. F. Haisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

13

1 MR. CARLISI:

He is not in custody, your Honor.
That is the point.

2 MR. RODENBERG:

I am not worried about that.

3 THE COURT:

I want to get zerroed in on the jury.

4 We know Barrett and Santana could not
5 have been there.

6 MR. RODENBERG:

7 But, your Honor, the article takes
8 good care of that, "A gang of between
9 four and eight men". Now, three, - the
10 jury may say are eliminated. Your Honor,
11 I cannot believe that they would put in
12 "between four and eight". I would bet
13 that they don't know whether there is
14 one or twenty, that that is in there for
15 convenience and if you agree with me
16 which, of course, you don't have to,
17 that that FBI witness was something less
18 than forthright Wednesday. This article
19 cleans him right up, "between four and
20 eight men". It explains that there are
21 four men work at a time and that sort
22 of thing. I just think it is unrealistic,
23 your Honor, to take any other view. You
24 know I have never made, - in any other
25 cases, made any motions for a mistrial.

-22-

1 I just believe that it has become
2 impossible now to defend here but what
3 bothers me is that it is an affirmative
4 act by the U.S. Attorney's Office. I
5 mean what has been written before has
6 not troubled me. I mean you cannot
7 stop the press from doing what it wants.

8 THE COURT:

I have no intention - -

9 MR. RODENBERG:

That's right.

10 THE COURT:

I believe that the press has the
11 absolute right not only to print the
12 news but to print the rumors.

13 MR. RODENBERG:

Right, sir.

14 THE COURT:

That would be the last thing I
15 would do would be to give a gag order
16 on the press.

17 MR. RODENBERG:

Oh, I quite agree with that but I
18 think that the discretion, - that
19 discretion should have been exercised
20 by the U.S. Attorney's Office, not the
21 press, of course not. If they can get
22 information they seek for what they
23 consider to be newsworthy purposes,
24 more power to them, but to charge not a
25 duty upon the U.S. Attorney, knowing

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1

there is a trial coming to a conclusion,

2

knowing he is coming about the same

3

of robbery to refrain, say, "Come

4

and see Monday", or whatever.

5

THE COURT:

would have been simpler. Mr.

6

Who would call down, please, and

7

to. Ar. hurry up. Here he is.

8

MR. WILLIAMS:

only if I was going to

9

suggest Judge perhaps as the last

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time that it voir dired the jury

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to out

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THE COURT:

will into that. One thing

13

at a e. Arcara, have you seen

14

the whole is morning's Courier?

15

MR. ARCARA:

, you nor.

16

THE COURT:

were here for all of the

17

price cuss You know we have a

18

bank cry to on and we have been

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on i some We now have motions

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for a trial on the article.

21

I think you know attitude toward the

22

First Amendment. I would think that the

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last thing that this court would do would

24

be to have any gag order on the press.

25

I believe that the Courier, the News has

-24-

16

1 the right not only to print the news,
2 to print interviews of public officials,
3 people in private, to put in photographs,
4 to print rumors. There has been some
5 argument made here that, - along the
6 line, we agree, defense counsel says
7 that the newspaper should print what
8 they believe is newsworthy but on the
9 other hand they should be some restraint
10 exercised by the prosecutor and officers
11 while a trial is in progress. Since
12 you have read the article, what do you
13 want to say about it?

14 MR. ARCARA:

Well, your Honor, I got a call
from Mr. Pauly two days ago and he
advised me that he was just doing a
general article regarding, - something
funny, Mr. Brownstein?

19 MR. BROWNSTEIN:

No. I know John Pauly. That's
just what he would say.

21 MR. ARCARA:

I take this whole matter very
seriously, and he indicated to me that
he was doing an article regarding
suburban bank robberies and I said,
"Well, that's fine", and I said, "What

25 -25-

17

1 do you want me to say, John", and he
2 says, "Do you give them much priority",
3 and I said, "Well, we give them top
4 priority. I think they are very serious
5 cases and that is the way our office
6 treats them", and he says, "Well, what
7 is generally the conviction rate", and
8 I said, "It is very high", I said, "We'
9 have almost all convictions on them",
10 and that is all I said to him. I had
11 no idea of what he was going to write
12 about and I didn't ask him and that was
13 generally the full extent of my
14 conversation with Mr. Pauly and I don't
15 think I said anything at all which would
16 affect this trial.

17 THE COURT:

Did anyone from the Bureau, Mr.
Gibbs or anyone else consult with you
about giving an interview at this time?

19 MR. ARCARA:

No, your Honor. I had no conversa-
tion with anyone from the FBI in this
regard at all.

22 THE COURT:

The surveillance pictures here are
evidentially police photographs. They
are not the kind that usually newspaper

25 -26-

1 on now. If you want an interview, why
2 don't you wait a week and I will be
3 glad to talk to you at length about our
4 problems as a prosecutor and call to
5 your attention a number of things".

6 MR. ARCARA:

Your Honor - -

7 THE COURT:

8 Put yourself in defense counsel's
9 shoes. I do not look upon Mr. Rodenberg
10 and Mr. Brownstein and Mr. Carlisi as
11 suspicious men but I think, - don't
12 you think that if you saw this spread,
13 these photos, they would say, "That it
14 certainly looks like by putting these
15 photos in and by talking about conviction
16 rate, talking about the gang, the pro
17 gang, four to eight men operating in
18 suburban banks", this is a suburban bank,
19 would not that make you suspicious that
20 something was about?

21 MR. ARCARA:

22 Well, that was initially my reaction
23 too, to be honest with you, Judge. I
24 talked to Mr. Williams and he said, "I
25 think it is just the opposite". He
said, "I think it affects our case, the
Government's case adversely and helps

1 the defendants in this case", so I think
2 there are two views on this and I took
3 your view when I first read it but Mr.
4 Williams has a different view.

5 THE COURT:

Call Mr. Gibbs, please, and tell
him to come over, that I would like to
find out more about this.

6
7
8 MR. ARCARA:

Fine, your Honor.

9 MR. WILLIAMS:

Excuse me, Judge. Mr. Lewis has
a radio. I think he can get him on the
radio.

10
11
12 THE COURT:

Let us do this; in the meantime
have the jury come up, please, Mr. White,
and we can make inquiry of the jury.
If anyone has the articles around, would
you put them away, please.

13
14
15
16 MR. BROWNSTEIN:

Your Honor, could I just say one
more thing that occurred to me with
relation to this?

17
18
19
20 THE COURT:

Surely.

21 MR. BROWNSTEIN:

Mr. Rodenberg reminded me of a
second thing, but it is quite conceivable
that a jury, after hearing the testimony
of Officer McGuigan relating to certainly
missing money and at least a fourth

1 suspect, no matter whether he considered
2 him a prime suspect or whatever, might
3 well feel after reading this article,
4 "Four to eight, huh, we got three here,
5 we got three of them here and we are
6 going to take care of these guys now".
7 That's the way I would feel if I were
8 a juror and read that article, and the
9 second thing, and you may or may not
10 discount this, I have had a number of
11 articles written in cases I was on by
12 John Pauly of the most damaging and
13 prejudicial kind. Now, I am not saying
14 that he wrote this article because he
15 had Brownstein on it, not at all.

16 THE COURT:

17 Pauly is a reporter and I know Mr.
18 Pauly and he has the right to fare it
19 out. There is nothing here. He quoted
20 Mr. Arcara correctly. The photographs
21 were evidentially photographs taken. I
22 am sure he quoted Mr. Gibbs correctly.
23 I am not here to defend, neither to
24 praise or to do anything but I am not
25 going to make Pauly an issue here. He
has a right - -

8 MR. RODENBERG:

There is something else which has
9 occurred. Marshal Anderson, - there
10 are no jurors here, - brought in two
11 newspapers that he said, - he left
12 them here. They were in the jury room.

13 THE COURT:

I did know that there were some
14 papers down there. Just put those to
15 one side, will you, Mr. Brownstein.

16 MR. BROWNSTEIN:

Yes, I will.

17 THE COURT:

I will ask the jurors. I intended
18 to ask the jurors about that, that
19 there were newspapers in the jury room
20 and to ask them if any of the jurors
21 had seen any of the papers in the jury
22 room. Mr. Gibbs, Mr. Arcara.

23 MR. ARCARA:

Yes, your Honor.

24 THE COURT:

Could you step up, please. Mr.
25 Gibbs, as you no doubt are aware, there

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OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 was an article in this morning's Courier
2 that had to do with extensive writeup
3 on the bank robbery problem which is
4 certainly of newsworthy interest, not
5 only to the newspapers but to the reading
6 public. The unfortunate thing is it
7 came up right during the middle of the
8 trial here that is going on. I believe
9 firmly in the public's right to know and
10 believe that the newspapers have the
11 right to print the news. As a matter
12 of fact, to print rumors, print photo-
13 graphs and all the rest of it but I
14 think that certainly interviews like
15 this must be timed. Some restraint must
16 be given. I know that you do not want
17 to hide things which should not be
18 hidden and you want to call to the
19 public's attention, problems law enforce-
20 ment has which are considerable, no
21 doubt, but it should be done with
22 restraint and furthermore, when you talk
23 to reporters you have to presume that
24 the reporter is going to write it
25 because that is his job and it is never

-32-

1 for any public official to say, "Well,
2 I didn't know that he was going to
3 write it or print it". You have got
4 to presume, even if the reporter says,
5 "Well, I just want some general informa-
6 tion", if you tell him something, you
7 have to presume that he is going to
8 write it and he is going to write it
9 as soon as he believes it is worthwhile
10 to write it. All right. I think the
11 most important thing is to go ahead.
12 I think it might be worthwhile if you
13 and Mr. Arcara maybe could meet with
14 me, give me your problems and suggestions
15 about this kind of thing privately in
16 a day or so, but I think it most important
17 now to continue with the trial.

18 MR. ARCARA:

Your Honor, I think it might be
19 appropriate if Mr. Gibbs can at least
20 put on the record, since this has been
21 brought up on the record, his view on
22 this interview.

23 THE COURT:

Very well.

24 MR. GIBBS:

I did not know when the article
25 was appearing at the time I granted the

38

1 interview because our office was
2 approached and the paper was concerned
3 about the great number of suburban
4 bank robberies. The reporter was told
5 by me about this trial and I said, "You
6 realize there is a trial going on now",
7 and he said, and I read the article
8 this morning and he said there would
9 be no mention of this trial.

10 THE COURT:

He did not mention the trial.

11 MR. GIBBS:

And there are no photographs or
12 anything else.

13 THE COURT:

The trouble is that at least two
14 of the photographs, - we know they are
15 not of this trial but they are very,
16 very similar to the photographs that
17 are in evidence in this trial.

18 MR. GIBBS:

All those photographs, your Honor,
19 have been in the paper in the past, all
20 of them.

21 MR. ARCARA:

What I am suggesting, your Honor,
22 I don't think the Bureau or my office
23 went out and sought publicity in any
24 way at all to impede this trial.

25 THE COURT:

That is all right, but when the

1 reporter comes you have to presume it
2 is his job to publish. It is like
3 giving a good drink to an alcoholic.
4 He is going to write it, or like giving
5 a tip to a horse player. Very well.
6 Thank you very much. Is the jury
7 coming, Mr. White? Call the jury. Mr.
8 Arcara.

9 MR. ARCARA:

Yes, sir.

10 THE COURT:

Could you talk a little bit on
11 this problem?

12 MR. ARCARA:

Yes, sir.

13 THE COURT:

I hate to have hard and fast rules
14 in this area because it is so difficult
15 to do it.

16 MR. ARCARA:

Your Honor, it has been my policy
17 since I have been the United States
18 Attorney to exercise total restraint
19 in this area.

20 THE COURT:

Pauly is an aggressive reporter
21 and I am sure he came to you and you
22 did not call him.

23 MR. ARCARA:

I will be more cautious then ever,
24 your Honor.

25 THE COURT:

When we resume, - I presume we will

20

21

THE COURT:

Mr. Rosenberg, Mr. Carlini --

22

MR. ROSENBERG:

Yes, your Honor.

23

THE COURT:

The note I have read is as follows,

24

"Your Honor, a verdict has been reached

25

on one defendant and the tally sheet --

H. T. Nuss & E. F. Kinsley

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WESTERN DISTRICT OF NEW YORK

marked. The jurors now wish to change
their votes after further discussion.
Can this be done? An impasse has been
reached on the other two because one
juror is unwilling to convict on circum-
stantial evidence. The reason the other
jurors wish to change their minds is
because they feel one is no more guilty
or innocent than the other two."

I have heard an hour's argument
from learned lawyers on the meaning of
a contract about providing nuclear fuel
and I think that the jurors could have
drawn the contract because every line
in the contract would say "You do this",
and then it would say "On the other
hand, you may not have to do that", but
what it comes to, I think as far as the
first question is concerned, "Can the
jurors change their mind", they have not
announced their verdict in open court.
After further deliberation certainly if
a juror believes conscientiously that
he should change his mind, he is entitled
to before the vote is recorded in open

1 court.

2 As far as the second part, "An
3 impasse has been reached on the other
4 the because one juror is unwilling to
5 convict on circumstantial evidence"; as
6 far as that is concerned, I believe that
7 I should say to the jurors again that
8 they should, are entitled to use circum-
9 stantial evidence just as they consider
10 direct evidence; that certainly if it is,
11 as I have told them before, if it is
12 reasonable, if it is based upon facts
13 which they have found to have been proven
14 to their satisfaction beyond a reasonable
15 doubt and the inferences point reasonably
16 to a certain conclusion, they are entitled
17 to consider that circumstantial evidence.
18 If, as we have said before, it points
19 reasonably to two conclusions, one of
20 innocence and one of guilt and the
21 inferences are equal, then, keeping in
22 mind the rule of proof beyond a reasonable
23 doubt, they must accept the inference
24 pointing to innocence. The jury is here.
25 No, they are not here yet. The defendants

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OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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and here.

(Defendants Michael Patrick Barrett
and Ferdinand Santana present.)

THE COURT:

Any suggestions before the jury
comes in?

MR. CARLISI:

I fully agree in the Court's comments
on the first point, your Honor, but as
to the second one I am somewhat reluctant
to agree with that simply because that
particular juror who is undecided may be
undecided because he is not convinced
beyond a reasonable doubt. Now, if he
is undecided for that reason, the Court's
instruction might sway him to agree with
the other eleven jurors. That is the
danger of that type of comment.

MR. ROSENBERG:

He could consider it an admonition
from the Court, sir, she or whichever it
is, and I would point out, of course,
your Honor has the authority perhaps to
do what you have suggested, but they
haven't asked anything in this regard.

Really all they are asking is whether they

-39-

1 can renage on that other matter as I see
2 it anyway and really, your Honor, I am
3 concerned as is each counsel, I am sure,
4 that that might just be enough to tilt
5 it when this man or woman would not
6 otherwise convict. It is a sticky
7 situation because they have explained to
8 you the trouble about the circumstantial
9 evidence which they don't normally do.

10 THE COURT:

Mr. Brownstein, anything?

11 MR. BROWNSTEIN:

Same comment, same feeling, same
comment, same fears.

12
13 THE COURT:

Have the jury come up, Mr. White.
Yes, Mr. Williams.

14
15 MR. WILLIAMS:

I was just going to say, your Honor,
my view of this is certainly this is not
going to the extent of a so-called
Allen charge. I don't think we have
reached that point yet and it seems to
me from the note as I understand it, one
juror is saying he won't convict based
upon circumstantial evidence. Maybe
there is something he misunderstands
about circumstantial evidence and it
seems to me that under those circumstances

1 the Court's indicated instruction to the
2 jury, I see nothing wrong with it. I
3 think it is proper and I think it may
4 aid the jury in resolving this case one
5 way or the other and we have been here
6 for a long time and I think if this jury
7 can resolve the issue, that they ought
8 to do that.

9 MR. BROWNSTEIN:

I also feel, adding what I didn't
say before, that he might also be telling
us he has a reasonable doubt and I don't
want to subvert that obviously in any
way by any charge your Honor might make.

14 MR. ROSENBERG:

Your Honor, at this point I think
I would, - what would you call it, a
mistrial, - a hung jury, whatever. There
has been a disclosure of what has been
going on in the grand jury which, of
course, is a highly unusual disclosure.
The fact circumstances such now, sir,
where we know that eleven are going one
way and it is really a matter of not
convincing but forcing that twelfth one
and I think if your Honor does say
anything about obligation, it is that

1 that could tilt that individual unwill-
2 ingly and we should not, you know, we
3 should have a better shot than that. I
4 don't know of any other instance.
5 Perhaps your Honor does, where they have
6 given the reason why they can't get along.
7 I think that automatically calls for a
8 mistrial.

9 MR. WILLIAMS:

Well, I don't think --

10 MR. RODENBERG:

Maybe not, I don't know, Judge. I
11 have never had that.

12 MR. WILLIAMS:

As I understand, they didn't say
13 how they stood, whether for guilt or
14 innocence.

15 MR. RODENBERG:

They said one. It is quite obvious
16 how they are standing because it talks
17 about the refusal to accept a certain
18 type of evidence by way of testimony, so
19 it is quite obvious how they stand, sir,
20 and I think in a situation such as this,
21 whoever it is should not be tilted over
22 by compulsion.

23 THE COURT:

There will be no compulsion.

24 MR. RODENBERG:

Oh, I know that, but in the mind of
25 the individual. I know there will be no

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commission from the court before
individuals in the court as they were
He will not feel satisfied. Mr.
Brennan, Mr. Carlisi.

MR. CARLISI:

One further comment, your Honor.
I think that is Mr. Rosen's as just
pointed out. If the court just into the
law again on circumstantial evidence,
it may give some feeling to the twelve
juror that he was alone with the other
eleven. I think possibly they have
already heard of a law as reason on
circumstantial evidence and I believe
they understand it and so some of it
further I think might cause a problem.

THE COURT:

I have your view. Thank you.

(They return to the courtroom.)

THE COURT:

All jurors are advised of the testimony
and the evidence.

Thank you gentlemen. I have a case
which comes on now at 11:00 A.M.,
a verdict has been reached on the
defendant and the case is dismissed.

1 The jurors now wish to change their votes
2 after further discussion. Can this be
3 done? An impasse has been reached on
4 the other two because one juror is
5 unwilling to convict on circumstantial
6 evidence. The reason the other jurors
7 wish to change their minds is because
8 they feel one is no more guilty or
9 innocent than the other two."

10 In the beginning to attempt to
11 answer your question I should again
12 repeat to you that no man or woman should
13 be convicted in a court unless the jury
14 is convinced of guilt beyond a reasonable
15 doubt.

16 You should also address the problem
17 by considering each defendant separately
18 in any case, by considering each count
19 separately.

20 In turning to the first question as
21 to whether you may now change your vote
22 after you have marked the tally sheet,
23 the answer to that question is "Yes, you
24 may" because you have not announced your
25 verdict in open court and certainly

1 deliberation is a continuing process and
2 although, as all of us in our daily life
3 make tentative plans in important things,
4 whether we are going to take an extended
5 trip, whether we shall have a serious
6 operation, whether we should go to the
7 dentist, all these are important problems
8 to be met in our daily life; we make
9 tentative plans but until we make a final
10 decision as reasonable, conscientious
11 human beings, we are entitled to change
12 our mind, and in a court case it might
13 be that tentative discussions go on in
14 the jury room and tentative decisions are
15 reached, but then on further discussion,
16 further facts come to the minds of a
17 juror or jurors and the juror decides
18 "Well, I was wrong in the beginning and
19 now conscientiously for a good reason I
20 change my mind" so that until you announce
21 your vote in open court, any juror is
22 entitled to change his mind. The answer
23 to the first question simply then is
24 "Yes".

25 The second part of this, it is not

1 a question but, on the other hand, I
2 suppose it would not be written down here
3 unless there was a question in your mind,
4 so I will take it as a question. That
5 is, "An impasse has been reached on the
6 other two because one juror is unwilling
7 to convict on circumstantial evidence".
8 Again we start with the proposition that
9 you cannot convict, you cannot vote to
10 convict unless you are convinced of guilt
11 beyond a reasonable doubt from the evidence
12 in the case. That means all the evidence
13 in the case, what the witnesses said,
14 what the witnesses show and the inter-
15 relationship between one and the other.

16 You know when we use circumstantial
17 evidence, and as I have explained to you
18 before it is proper for a juror to use
19 and consider circumstantial evidence.
20 We consider it all the time in matters
21 of importance to ourselves. Today with
22 the first time you came to this court-
23 house you saw the elevators; you did not
24 know if you had never been in the building
25 before that the elevators went to the

1 various floors in the building but
2 because of your past experience in life,
3 you assumed that they would go to the
4 various floors in the building as you
5 got on the elevator. That is a use of
6 circumstantial evidence because no one
7 told you that the elevator would go to
8 the second, third, fourth, fifth and
9 sixth floor and so forth.

10 You were out on a country road in
11 the wintertime, there is freshly fallen
12 snow. You see automobile tracks in the
13 snow. It would be, again, you would know
14 a car passed that way. You did not see
15 the car. You are using circumstantial
16 evidence. You could not help but use
17 circumstantial evidence.

18 On the other hand, if you saw foot-
19 prints in the snow, you would not be able
20 to tell how tall or how short the
21 individual was and therefore you must be
22 careful how you use circumstantial
23 evidence. If you saw footprints going
24 from one house to another, you would say
25 that an individual walked from house "A"

75
1 to house "B". You could not escape the
2 consequences of what you saw there before
3 you so that it is certainly proper to
4 use, for any juror to use circumstantial
5 evidence.

6 Keeping in mind what I have explained
7 to you before that you must be, - the
8 underlying facts, of course, you must be
9 convinced of the proof of the underlying
10 facts beyond a reasonable doubt. Further-
11 more, the inferences that you take must
12 be reasonable, must be carefully arrived
13 at.

14 Certainly, as I have told you before,
15 if there are two reasonable inferences
16 that may be reached, both equal, one
17 pointing to innocence and the other
18 pointing to guilt, then, of course, you
19 should adopt the inference that points
20 to innocence rather than to guilt.

21 The rest of your comment here,
22 "The reason the other jurors wish to
23 change their minds is because they feel
24 one is no more guilty or innocent than
25 the other two". Frankly I do not get

1 the full import of that meaning by
2 itself except it seems to me that you
3 should go back to the jury room and
4 continue to deliberate.

5 Again, it is important that you
6 listen to the conscientious views of
7 your fellow jurors and give them your
8 own well considered suggestions. You
9 should not in any case consider material
10 outside of the courtroom, but you should
11 consider what you had heard here. Mrs.
12 Cox, I do not want you to tell me how
13 you stand or anything, but as far as
14 going back, do you think any further
15 instruction is needed from the Court for
16 you to continue your deliberation?

17 THE FOREMAN OF THE JURY: At this time, no.

18 THE COURT: "No", all right. If you do want
19 any further instruction, why don't you
20 write the question and give it to the
21 marshal and then we would have you back
22 up again. Very well. Why don't you go
23 back to the jury room and continue with
24 your deliberation. I will ask Mr.

25 Williams and the other lawyers to stand
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1 by. Very well, go back with the Marshal,
2 please.

3
4 (Jury retires to resume its
5 deliberation at 11:31 a.m.)
6

7 THE COURT:

All right.

8 MR. DROWNSTEIN:

9 Your Honor, something has, - did
10 occur to me upon your re-reading of the
11 note and my re-thinking and this is, of
12 course, why the motion for severance was
13 requested a long time ago. It would
14 seem that the feeling among the jurors
15 is that for some reason they must treat
16 all three of those defendants in a sense
17 equally and I know you did give an
18 instruction on that like Mr. Carlisi said
almost ad nauseam, but I think perhaps --

19 THE COURT:

Thank you, Mr. Carlisi.

20 MR. DROWNSTEIN:

21 I think that a further instruction
22 which regard to you have got to consider
23 these defendants separately. "I don't
24 think possibly they realize that. The
25 tone of that note, "One is no more guilty
than the other two", that I think bespeaks

1 the danger.

2 THE COURT:

I think I told them that several
3 times.

4 MR. RODENBERG:

Your Honor, on behalf of the
5 Defendant Santana, I would ask your
6 Honor to consider the remarks I made
7 earlier as a motion to discharge the jury
8 because it is obvious now that any
9 agreement the jury might come to could
10 because of the language of the note
11 presented to your Honor, - that is,
12 taking that as a basis, be regarded as
13 working some form, as a form of compulsion.
14 I agree that your Honor was most fair in
15 his remarks. However, I do think, sir,
16 it is quite obvious they are standing
17 eleven to one, shall I say, on the side
18 of the prosecution and in such a situation
19 where this is made known and where the
20 jurors only ask if they could reconsider
21 as to the man who has, - whose innocence
22 or guilt has already been determined,
23 that there should now be, - that the jury
24 should now be dismissed.

25 THE COURT:

Mr. Carlisi, do you have anything to

-51-

say?

1
2 MR. CARLISI:

I would join in that motion.

3 MR. BROWNSTEIN:

I would join also.

4 THE COURT:

I will deny the motions. The
5 defendants may be returned, Mr. King,
6 and I will ask the attorneys to remain
7 in the area, please.

United States of America vs.

United States District Court for

FERDINAND SANTANA

WESTERN DISTRICT OF NEW YORK

DEFENDANT

DOCKET NO. Cr-76-95

JUDGMENT AND PROBATION/CONFINEMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
December 16 1976

COUNSEL

☐ WITHOUT COUNSEL. However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL. Salten Rodenberg
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE, ☒ NOT GUILTY

There being a ~~verdict~~/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of Bank Robbery (Ct. 1), in violation of Title 18, U.S.C., Section 2113(a); Bank Theft (Ct. 2), in violation of Title 18, U.S.C., Section 2113(b); Armed Bank Robbery, (Ct. 3), in violation of Title 18, U.S.C., Section 2113(d).

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby ~~remanded to the custody of the Attorney General for a period of Ten (10) Years. It is the intent of the Court that a single general sentence be imposed on all counts. See Prince against the United States 352 U.S. 322, and Gorman against United States 456 F.2d 1258 (2nd Cir. 1972). This sentence to run concurrently with the sentences imposed in Cr-76-102, Cr-76-134, Cr-76-135.~~

BEST COPY AVAILABLE

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

COMMITMENT
RECOMMEN-
DATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends;

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

John T. Curtin

JOHN T. CURTIN, U.S. District Judge

December 16, 1976

CERTIFIED AS A TRUE COPY ON

THIS DATE Dec. 16, 1976

BY Linda Schlicht
() CLERK
() DEPUTY

RECEIVED U.S. MARSHAL
DEC 16 12 31 PM '76
U.S. MARSHAL'S OFFICE
NEW YORK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs

MICHAEL PATRICK BARRETT,
JOSEPH CHARLES FERRARO and
FERDINAND SANTANA

MARCH 1976 SESSION
(Impaneled 6/8/76)
No. CR 76-95
Vio. T. 18, U.S.C.,
§§ 2113 (a), (b) and
(d)

COUNT I

The Grand Jury Charges:

On or about the 16th day of June, 1976, in the Western District of New York, the defendants, MICHAEL PATRICK BARRETT, JOSEPH CHARLES FERRARO and FERDINAND SANTANA, did willfully, knowingly and unlawfully take from the person and presence of Natalie Rossini, and others, approximately \$9,900 in money, belonging to, and in the care, custody, control management and possession of the Chase Manhattan Bank, 2225 Colvin Boulevard, Town of Tonawanda, New York, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation; all in violation of Title 18, United States Code, Section 2113(a).

COUNT II

The Grand Jury further charges:

On or about the 16th day of June, 1976, in the Western District of New York, the defendants, MICHAEL PATRICK BARRETT, JOSEPH CHARLES FERRARO and FERDINAND SANTANA, did willfully, knowingly and unlawfully take and carry away, with intent to steal and purloin, from the Chase Manhattan Bank, 2225 Colvin Boulevard, Town of Tona-

wanda, New York, the sum of approximately \$9,900 in money, belonging to, and in the care, custody, control, management and possession of the Chase Manhattan Bank, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation; all in violation of Title 18, United States Code, Section 2113(b)

COUNT III

The Grand Jury further charges:

On or about the 16th day of June, 1976, in the Western District of New York, the defendants, MICHAEL PATRICK BARRETT, JOSEPH CHARLES FERRARO and FERDINAND SANTANA, did willfully, knowingly and unlawfully take from the person and presence of Natalie Rossini, and others, approximately \$9,900 in money belonging to, and in the care, custody, control, management and possession of the Chase Manhattan Bank, 2225 Colvin Boulevard, Town of Tonawanda, New York, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation and the defendants, MICHAEL PATRICK BARRETT, JOSEPH CHARLES FERRARO and FERDINAND SANTANA, in committing the aforesaid offense, did assault Natalie Rossini, and others, and put in jeopardy the life of Natalie Rossini, and others, with the use of weapons, to wit, handguns; all in violation of Title 18, United States Code, Section 2213(d).

(P) Richard J. Arcara
RICHARD J. ARCARA
United States Attorney

A TRUE BILL:

s/ Ralph F. Dean
Foreman